

House Engrossed Senate Bill

**FILED**

**KEN BENNETT  
SECRETARY OF STATE**

State of Arizona  
Senate  
Forty-ninth Legislature  
Second Regular Session  
2010

CHAPTER 207

## **SENATE BILL 1193**

AN ACT

AMENDING SECTION 49-457, ARIZONA REVISED STATUTES; RELATING TO STATE AIR  
POLLUTION CONTROL.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 49-457, Arizona Revised Statutes, is amended to  
3 read:

4 49-457. Agricultural best management practices committee;  
5 members; powers; permits; enforcement; preemption;  
6 definitions

7 A. A best management practices committee for regulated agricultural  
8 activities is established.

9 B. The committee shall consist of:

10 1. The director of environmental quality or the director's designee.

11 2. The director of the Arizona department of agriculture or the  
12 director's designee.

13 3. The dean of the college of agriculture of the university of Arizona  
14 or the dean's designee.

15 4. The state director of the United States natural resources  
16 conservation service or the director's designee.

17 5. One person actively engaged in the production of citrus.

18 6. One person actively engaged in the production of vegetables.

19 7. One person actively engaged in the production of cotton.

20 8. One person actively engaged in the production of alfalfa.

21 9. One person actively engaged in the production of grain.

22 10. One soil taxonomist from the university of Arizona college of  
23 agriculture.

24 11. One person actively engaged in the operation of a beef cattle feed  
25 lot.

26 12. One person actively engaged in the operation of a dairy.

27 13. One person actively engaged in the operation of a poultry facility.

28 14. One person actively engaged in the operation of a swine facility.

29 15. One person who is employed by a county air quality department or  
30 agency.

31 C. The governor shall appoint the members designated pursuant to  
32 subsection B, paragraphs 5 through 15 of this section for a term of six  
33 years. Members may be reappointed. Members are not entitled to compensation  
34 for their services but are entitled to receive reimbursement of expenses  
35 pursuant to title 38, chapter 4, article 2.

36 D. The committee shall elect a chairman from the appointed members to  
37 serve a two year term.

38 E. The committee shall meet at the call of the chairman or at the  
39 request of a majority of the appointed members.

40 F. The department of environmental quality, the Arizona department of  
41 agriculture and the college of agriculture of the university of Arizona shall  
42 cooperate with and provide technical assistance and any necessary information  
43 to the committee. The department of environmental quality shall provide the  
44 necessary staff support and meeting facilities for the committee.

1 G. A person who commences a regulated agricultural activity after  
2 December 31, 2000 shall comply with the general permit within eighteen months  
3 of commencing the activity.

4 H. The committee shall adopt, by rule, an agricultural general permit  
5 specifying best management practices for regulated agricultural activities to  
6 reduce PM-10 particulate emissions. A person who is subject to an  
7 agricultural general permit pursuant to this section is not subject to a  
8 permit issued pursuant to section 49-426 except as provided in subsection K  
9 of this section. The committee shall adopt by rule a list of best management  
10 practices, at least two of which shall be used to demonstrate compliance with  
11 applicable provisions of the general permit. Best management practices may  
12 vary within the regulated area, according to regional or geographical  
13 conditions or cropping patterns.

14 I. If the director determines that a person who is engaged in a  
15 regulated activity is not in compliance with the general permit, and that  
16 person has not previously been subject to a compliance order issued pursuant  
17 to this section, the director may serve on the person by certified mail an  
18 order requiring compliance with the general permit and notifying the person  
19 of the opportunity for a hearing pursuant to title 41, chapter 6, article 10.  
20 The order shall state with reasonable particularity the nature of the  
21 noncompliance and shall specify that the person has a period that the  
22 director determines is reasonable, but is not less than ~~six months~~ SIXTY  
23 DAYS, to submit a plan to the supervisors of the natural resource  
24 conservation district in which the person engages in the regulated activity  
25 that specifies the best management practices from among those adopted in rule  
26 pursuant to subsection H of this section that the person will use to comply  
27 with the general permit.

28 J. If the director determines that a person who is engaged in a  
29 regulated activity is not in compliance with the general permit, and that  
30 person has previously submitted a plan pursuant to subsection I of this  
31 section, the director may serve on the person by certified mail an order  
32 requiring compliance with the general permit and notifying the person of the  
33 opportunity for a hearing pursuant to title 41, chapter 6, article 10. The  
34 order shall state with reasonable particularity the nature of the  
35 noncompliance and shall specify that the person has a period that the  
36 director determines is reasonable, but is not less than ~~six months~~ SIXTY  
37 DAYS, to submit a plan to the department that specifies the best management  
38 practices from among those adopted in rule pursuant to subsection H of this  
39 section that the person will use to comply with the general permit.

40 K. If a person fails to comply with the plan submitted pursuant to  
41 subsection J of this section, the director may revoke the agricultural  
42 general permit for that person and require that the person obtain an  
43 individual permit pursuant to section 49-426. A revocation becomes effective  
44 after the director has provided the person with notice and an opportunity for  
45 a hearing pursuant to title 41, chapter 6, article 10.

1 L. The committee may periodically reexamine, evaluate and modify best  
2 management practices. Any approved modifications shall be submitted to the  
3 United States environmental protection agency as a revision to the applicable  
4 implementation plan.

5 M. The committee shall develop and commence an education program. The  
6 education program shall be conducted by the director or the director's  
7 designee or designees.

8 N. A best management practice adopted pursuant to this section does  
9 not affect any applicable requirements in an applicable implementation plan  
10 or any other applicable requirements of the clean air act, including section  
11 110(1) of the act (42 United States Code section 7410(1)).

12 O. THE REGULATION OF PM-10 PARTICULATE EMISSIONS PRODUCED BY REGULATED  
13 AGRICULTURAL ACTIVITIES IS A MATTER OF STATEWIDE CONCERN. ACCORDINGLY, THIS  
14 SECTION PREEMPTS FURTHER REGULATION OF REGULATED AGRICULTURAL ACTIVITIES BY A  
15 COUNTY, CITY, TOWN OR OTHER POLITICAL SUBDIVISION OF THIS STATE.

16 P. For the purposes of this section, unless the context otherwise  
17 requires:

18 1. "Agricultural general permit" means best management practices that:  
19 (a) Reduce PM-10 particulate emissions from tillage practices and from  
20 harvesting on a commercial farm.

21 (b) Reduce PM-10 particulate emissions from those areas of a  
22 commercial farm that are not normally in crop production.

23 (c) Reduce PM-10 particulate emissions from those areas of a  
24 commercial farm that are normally in crop production including prior to plant  
25 emergence and when the land is not in crop production.

26 (d) Reduce PM-10 particulate emissions from the activities of a dairy,  
27 a beef cattle feed lot, a poultry facility or a swine facility, including  
28 practices relating to the following:

29 (i) Unpaved access connections.

30 (ii) Unpaved roads or feed lanes.

31 (iii) Animal waste handling and transporting.

32 (iv) Arenas, corrals and pens.

33 2. "Applicable implementation plan" means that term as defined in 42  
34 United States Code section 7601(q).

35 3. "Best management practices" means techniques that are verified by  
36 scientific research and that on a case by case basis are practical,  
37 economically feasible and effective in reducing PM-10 particulate emissions  
38 from a regulated agricultural activity.

39 4. "Maricopa PM-10 particulate nonattainment area" means the Phoenix  
40 planning area as set forth in 40 Code of Federal Regulations section 81.303.

41 5. "Regulated agricultural activities" means commercial farming  
42 practices that may produce PM-10 particulate emissions within the regulated  
43 area, including activities of a dairy, a beef cattle feed lot, a poultry  
44 facility and a swine facility.

- 1           6. "Regulated area" means any of the following:
- 2           (a) The Maricopa PM-10 particulate nonattainment area.
- 3           (b) Any portion of area A that is located in a county with a
- 4           population of two million or more persons.
- 5           (c) Any other PM-10 particulate nonattainment area established in this
- 6           state on or after June 1, 2009.

APPROVED BY THE GOVERNOR APRIL 28, 2010.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 28, 2010.